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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 613.

ANNA S. A. GRAF and AUGUST GRAF, individually, and said AUGUST GRAF, as Executor of the Estate of George C. Shipman, Deceased, RUTH MARSH, DORIS MARSH, BLANCHE BILLOWS, AMY WILLIAMS KING, T. WRIGHT WILLIAMS and ADELAIDE S. WILLIAMS,

Petitioners,

vs.

CITY OF NEWARK,

Respondent.

PETITION FOR A REHEARING ON DETERMINATION DENYING A PETITION FOR A WRIT OF CERTIORARI TO THE NEW JERSEY COURT OF ERRORS AND APPEALS, PURSUANT TO RULE XXXIII OF THE GENERAL RULES OF THE UNITED STATES SUPREME COURT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 818.

ANNA S. A. GRAF and AUGUST GRAF, individually, and said AUGUST GRAF, as Executor of the Estate of George C. Shipman, Deceased, RUTH MARSH, DORIS MARSH, BLANCHE BELLOWS, AMY WILLIAMS KING, T. WRIGHT WILLIAMS and ADELAIDE S. WILLIAMS,

Petitioners,

vs.

CITY OF NEWARK,

Respondent.

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The Petitioners above named respectfully show:

That on the 12th day of March, 1943, they filed in this Court their petition praying that a writ of certiorari be issued to the New Jersey Court of Errors and Appeals commanding that Court to certify and send to this Court for review and determination a full and complete transcript of the record and of all proceedings in the case which was entitled in that Court Anna S. A. Graf, and others, Relators-Appellants, against the City of Newark, Respondent-Ap-

pellee, and that the judgment of said Court of Errors and Appeals affirming the judgment of the New Jersay Supreme Court and the judgment so affirmed be reversed by this Honorable Court.

There was filed with said petition a brief in support thereof with an appendix reciting the statutes involved. The respondent filed its brief in objecting to the granting of the writ of certiorari (served on petitioners' attorneys on April 6th, 1943).

In said brief counsel for the respondent in their argument made no answer to the merits of the controversy presented by the petitioners and their brief in support thereof, but presented argument only to the effect that *this Court was without jurisdiction to entertain the petition for a writ.*

Counsel for the petitioners prepared and filed a reply brief on the question of jurisdiction, the time to file such reply brief having been extended to the 16th day of April, 1943. The completion of the filing of the reply brief by filing an original thereof upon which there was proof of service upon the attorney for the respondent was effected on the 16th day of April, 1943, which was Friday. The determination of this Court denying the writ was made on the following Monday, April 19th, 1943.

By reason of this short lapse of time petitioners are constrained to believe that this Honorable Court did not have before it, and therefore, could not consider the reply brief filed by petitioners and that the decision and judgment of this Court may have been based solely upon the question raised by the respondent, to wit: lack of jurisdiction. Your petitioners believe that the reply brief, to which reference is made, dispelled any question raised by respondent's brief, that this Court was without jurisdiction to

entertain the petition for a writ of certiorari. In the interest of brevity and conciseness, further reference to the reply brief is omitted, but the Court is requested to give it consideration.

As was said in *Hague, Mayor, et al.* v. *Committee for Industrial Organization,* 307 U. S. 496, 59 Supreme Court Reporter, 954, at page 507 of the official report:

> "Every question arising under the constitution may, if properly raised in a State court, come ultimately to this court for decision."

The Transcript of Record shows that there was raised before the Court of Errors and Appeals of New Jersey the question that the findings, holdings, and decision of the Court below amounted to the taking of the property and the property rights of these petitioners without due process of law, contrary to and in violation of the Fifth and Fourteenth amendments to the Constitution of the United States of America and to the provisions of Paragraph 1, Section 10 of Article 1 of the Constitution of the United States of America (R., p. 6.)

This Court has frequently held that the laws of a state may be created by statute or decisions of the Courts (*Erie Railroad Company* v. *Tompkins,* 304 U. S. 64; 58 S. Ct. 817).

By the opinion in this case (R., pp. 7-10) the Court of Errors and Appeals of the State of New Jersey has created a law of that State whereby the petitioners are deprived of their reversionary titles to the real estate involved which has been taken by the respondent the City of Newark. In reaching that determination the Court passed upon the contract

between the petitioners' ancestor and the Morris Canal and Banking Company dated January 9th, 1830, acknowledged August 4th and August 8th, 1855, and recorded August 9th, 1855 (R., p. 25. Habendum clause, R., p. 26. Opinion, R., pp. 7-10).

As this Court said in *United States Mortgage Co., et. al.* v. *Matthews, et al.*, 293 U. S. 232, 236:

> "It is well-established doctrine that where the contract clause is invoked this Court must determine for itself the nature and effect of the alleged agreement and whether this has been impaired."

To the same effect, *Funkhouser* v. *J. B. Preston Co. Inc.*, 290 U. S. 163, 167. *Coombes* v. *Getz*, 285 U. S. 434, 441; *Violet Trapping Co., Inc.* v. *Grace, et al.*, 297 U. S. 119, 120.

The Court further held that the legislative enactments of the State of New Jersey in 1922 and 1923 were in effect amendments to the charter of the canal company established by Act of the legislature in 1824 and "are in *pari materia* and should be construed together as a whole." Therefore, the New Jersey court in rendering its decision passed upon the statutes of the State of New Jersey. As pointed out in the main brief on the application for a writ, with supporting cases, the legislature may not take away a title vested under a deed many years earlier by such subsequent legislative enactment.

If the decision of this Court in denying the petition for a writ of certiorari was based upon lack of jurisdiction, then your petitioners urge that a rehearing be granted, and that upon such rehearing the writ be granted.

If the decision and determination of this Court was not based upon lack of jurisdiction, then your petitioners urge that it is disclosed by the record that they have been deprived of their vested property rights without due process of law and without just compensation.

If the decision and determination denying the petition for a writ was based upon the determination that the language used in the deed conveying the premises in question: "for so long as the same shall be used for the purposes for which the canal company have power to use the same by the true intent and meaning of the Act", under the circumstances as shown in the record, does not upon abandonment of the canal constitute a true reversion, then your petitioners respectfully pray that a rehearing be granted, and if the writ be denied on such rehearing, that the ground upon which it is denied be stated by this Honorable Court in its opinion or determination.

As the matter now stands, your petitioners represent that their constitutional rights have been invaded in that the conract existing between your petitioners' ancestor and the Morris Canal and Banking Company has been impaired; that the private property of your petitioners has been taken for a public use without just compensation; and that your petitioners have been deprived of their property without due process of law; and that they are entitled to have these questions passed upon by this Honorable Court.

WHEREFORE, your petitioners respectfully pray that this Court grant a rehearing upon their petition for a writ of certiorari to the New Jersey Court of Errors and Appeals and that upon such rehearing this Court grant their petition as in said petition prayed, and

that these petitioners may have such other and further relief in the premises as may be just.

Respectfully submitted,

ANNA S. A. GRAF and AUGUST GRAF, individually, and said AUGUST GRAF as Executor of the Estate of George C. Shipman, deceased, RUTH MARSH, DORIS MARSH, BLANCHE BELLOWS, AMY WILLIAMS KING, T. WRIGHT WILLIAMS and ADELAIDE S. WILLIAMS,
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of Hoboken, N. J. and

VICTOR RUSKIN,
of Jersey City, N. J.,
Of Counsel.

Certificate of Counsel.

I, CHARLES P. ROGERS, of Counsel to the petitioners herein do hereby certify that the foregoing petition for a rehearing upon the denial of the application for a writ of certiorari to the Court of Errors and Appeals of the State of New Jersey is presented in good faith and not for delay.

CHARLES P. ROGERS,
Counsel.